COVINGTON

COVINGTON & BURLING LLP

E-ALERT | Class Actions

January 15, 2014

U.S. SUPREME COURT LIMITS ABILITY OF DEFENDANTS TO REMOVE LAWSUITS FILED BY STATE ATTORNEYS GENERAL INTO FEDERAL COURT

In a decision with significant implications for businesses that are, or may become, the targets of lawsuits filed by States, the U.S. Supreme Court has held that that a *parens patriae* lawsuit filed by a state attorney general does not qualify as a "mass action" and may not be removed to federal court on that basis.

The decision in *Mississippi ex rel. Hood v. AU Optronics Corp.*, handed down on January 14, 2014, involved a provision of the Class Action Fairness Act of 2005 ("CAFA") which permits defendants in civil suits to remove "mass actions" from state court to federal court. CAFA defines a "mass action" as "any civil action … in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." 28 U.S.C. § 1332(d)(11)(B)(i). The Fifth Circuit had concluded that a lawsuit filed by a State as the sole plaintiff was a removable "mass action" when the State sought restitution based on injuries suffered by the State's citizens. The Fourth, Seventh, and Ninth Circuits had rejected this view.

In *AU Optronics*, the Supreme Court held that a "mass action" must involve the monetary relief claims of 100 or more named plaintiffs. Because a lawsuit filed by a State only involves one named plaintiff, the Supreme Court held that it may not be removed to federal court as a "mass action" even if the State seeks restitution payable to injured State citizens.

Parens patriae lawsuits by state attorneys general—who are often represented on a contingency basis by the same class action lawyers who bring antitrust, consumer protection, and other collective actions on behalf of private plaintiffs—have been viewed as an alternative way of maintaining such collective claims in state courts without triggering CAFA's removal provisions. The Supreme Court's decision is likely to give added impetus to these suits, which are now more difficult for defendants to move from state court to federal court. Prior to *AU Optronics*, many defendants—especially those involved in lawsuits in Louisiana, Mississippi, and Texas—had successfully removed *parens patriae* lawsuits filed by States from state court to federal court on the theory that those cases presented removable "mass actions." Although *AU Optronics* forecloses this removal theory, there may still be other ways that defendants may remove some such lawsuits to federal court, and future developments in this area are to be expected.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our class actions practice group:

Andrew Ruffino	+1.212.841.1097	aruffino@cov.com
Robert Wick	+1.202.662.5487	rwick@cov.com
Sonya Winner	+1.415.591.7072	swinner@cov.com